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Agreement 2017-214

MASTER RIGHT OF WAY LICENSE AGREEMENT

This Master Right of Way Agreement (the "**Agreement**") made this 15th day of March, 2019 ("Effective Date"), between **City of South Fulton, GEORGIA**, with its principal offices located at 5440 Fulton Industrial Blvd., S.W. Atlanta, GA 30336 (hereinafter designated "**CITY**") and NEW CINGULAR WIRELESS PCS, LLC. a Delaware limited liability company d/b/a AT&T Mobility, with its principal offices located at 575 Morosgo Drive, NE, Atlanta, Georgia 30324, hereinafter designated "**PROVIDER**." CITY and PROVIDER are at times collectively referred to hereinafter as the "**Parties**" or individually as a "**Party**".

WITNESSETH

WHEREAS, the CITY of South Fulton desires to promote the health, safety and general welfare of the public by regulating the siting and placement of communications technologies in the public rights of way, including the encouragement of location and collocation of communications technologies on existing structures to the maximum extent possible; and

WHEREAS, pursuant to O.C.G.A. 46-5-1 et seq. telephone companies shall comply with all applicable local laws and regulations, including municipal ordinances and regulations, regarding the placement and maintenance of facilities in the public rights of way; and

WHEREAS, PROVIDER desires to install, maintain and operate communications facilities in and/or upon the CITY's right-of-way ("**Right-of-Way**") and upon City-owned poles and/or structures in the Right-of-Way; and

WHEREAS, CITY and PROVIDER desire to enter into this Agreement to define the general terms and conditions which will govern their relationship with respect to particular sites at which CITY may wish to permit PROVIDER to install, maintain and operate communications facilities as hereinafter set forth; and

WHEREAS, CITY and PROVIDER acknowledge that, subject to CITY's issuance of Permits (as such term is defined in this Agreement) to PROVIDER, the Parties will enter into Permit agreements with respect to particular locations or sites which the CITY agrees to license for use.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. PREMISES. Subject to Permit requirements set forth in Paragraph 2 and pursuant to all of the terms and conditions of this Agreement, the CITY agrees to permit PROVIDER certain space (the "**Space**") located on a portion of CITY's Right-of-Way (the "**Property**"), for the installation, operation and maintenance of communications facilities. Subject to Permit requirements set forth in Paragraph 2, the CITY shall permit PROVIDER to place antennas and other associated communications equipment within the CITY's Right-of-Way, together with such additional space on the Property sufficient for the installation, operation and maintenance of antennas (the "**Antenna Space**") and associated communications equipment that are owned by PROVIDER and/or that are owned by PROVIDER'S customers and maintained, controlled, and managed by PROVIDER, whether on existing poles or ground-mounted (collectively, the "**Communications Facility(ies)**"); together with such additional space on and over the Property for the installation, operation and maintenance of wires, cables, conduits and pipes (the "**Cabling Space**") running between and among the Space and Antenna Space and to all necessary electrical and telephone utility sources located on the Property as necessary for the communications equipment;

together with the non-exclusive right of ingress and egress from CITY's Right-of-Way, seven (7) days a week, twenty four (24) hours a day (provided, however, if extensive interference with pedestrian or vehicular traffic on the Right-of-Way is involved, subject to approved Permit or work restrictions due to holidays and storm emergencies), over the Property to and from the Premises (as hereinafter defined) for the purpose of installation, operation and maintenance of the Communications Facility. If no existing location or collocation can accommodate the proposed Communications Facility due to technical or physical circumstances, then, PROVIDER may request Space for the construction and installation of new poles or ground-mountings, which shall also constitute "Communications Facilities" under this Agreement. The Space, Antenna Space and Cabling Space are hereinafter collectively referred to as the "Premises" and shall be as described in each Permit to be executed by the Parties. In the event there are not sufficient electric, telephone, cable or fiber utility sources located on the Property, CITY agrees to grant PROVIDER or the local utility provider the right to install such utilities on, over and/or under the Property necessary for PROVIDER to operate its Communications Facility, provided that PROVIDER or such utility provider has applied for and received a Permit in accordance with Paragraph 2 below. The Parties acknowledge that currently-existing policies of CITY, as well as of the Federal Highway Administration, prohibit utility location on fully-controlled-access roads such as the Interstate Highway System. Therefore, this Agreement shall cover only non-controlled-access routes.

2. PERMITS. Prior to commencing any work on the Property or the Premises, PROVIDER shall have applied for and obtained an approved permit from the CITY pursuant to Title 12, Chapter 2 (Telecommunication Facilities and Antennas) of the City Code, and as it may be amended in the future (hereinafter a "Telecommunication Facility Permit"). Furthermore, if necessitated by the City's Public Works Department, PROVIDER may be required to obtain a Right-of-Way Encroachment Permit (hereinafter "ROW Permit") for installation of the Telecommunication Facilities. The Permit(s), if granted, will allow PROVIDER the right to construct its Communications Facility and maintain a service utility line for a maximum distance of fifty-two feet (52') within the Right-of-Way, subject to reasonable conditions of individual Permits. This 52' limitation applies only to service utility lines owned, operated, or maintained by PROVIDER and does not apply to lines or facilities of any affiliate of PROVIDER that occupies the Right-of-Way pursuant to O.C.G.A. §46-5-1 and in accordance with applicable permitting requirements. Each Permit shall be in accordance with all applicable provisions of the CITY Code as may be amended from time to time and the Utilities Accommodation Policy and Standards Manual ("UAM") including all references contained therein to codes, rules, regulations, schedules, forms and appendix items, except Appendix B (Permit Forms and supporting Documents), promulgated by the Georgia Department of Transportation, as may be amended from time to time, as applicable. PROVIDER will apply for Permit(s) for each separate site for which PROVIDER desires to locate a Communications Facility and abide by the terms of that Permit(s).

PROVIDER shall use the Premises only in accordance with good engineering practices and in compliance with all applicable Federal Communications Commission ("FCC"), Federal, State, and Local laws, ordinances, regulations and rules. With each permit application, PROVIDER shall furnish the CITY with detailed construction plans and drawings for each individual Property and Premises, together with necessary maps, indicating specifically the existing poles to be used, the number and character of the attachments to be placed on such poles, equipment necessary for PROVIDER's use, replacements of existing pole(s), any new or additional pole(s) which may be required (with specific dimensions and details), any new installations for transmission conduit, pull boxes, and appurtenances, and all other information as required by the City Code.

PROVIDER must obtain and submit to the CITY a structural engineering study carried out by a qualified structural engineer and using the O-Calcul Structural Analysis tool or equivalent for wood utility poles, or for other poles, showing that the pole(s) is (are) able to support the proposed facilities. If the study finds that any proposed structure is inadequate to support the proposed antenna loads, CITY may decline to permit installation. If the Permit is for construction and installation of new poles or ground-mountings, PROVIDER must also submit evidence demonstrating the technical or physical circumstances that prevent the location or collocation of its Communications Facilities on existing Premises, and such other materials and evidence as required by the City Code.

The City shall have the right to reject an individual Permit application as provided in Title 12, Chapter 2 of the City Code.

3. CITY OPERATION OF TRAFFIC LIGHT SIGNAL OR STREET LIGHT SYSTEM; EMERGENCIES. PROVIDER acknowledges that the Property, inclusive of the Premises, may be used to provide traffic control and street lighting for the residents of the CITY. The Parties agree that this Agreement does not in any way limit CITY's right to operate and maintain traffic lights and street lights in the manner that best enables the functioning thereof and protects public safety.

In case of an emergency arising from or related to the Communications Facilities ("emergency" being defined for purposes of this Agreement as an event which the CITY determines as posing an immediate threat of substantial harm or damage to the health, safety and welfare of the public and/or the Property and/or Premises), CITY shall have the right to act as necessary to protect the public health and safety of its citizens, and to protect public and private property. Subject to the requirements of the Telecommunications Facilities and Antennas provisions of the City Code, CITY will make every reasonable effort to coordinate its emergency response with PROVIDER, provided, however, that where CITY requires emergency access to the Property and Premises, CITY shall contact PROVIDER promptly and in no event later than twenty-four (24) hours after such access. During the course of said emergency, CITY may, in the reasonable exercise of its police powers, remove the Communications Facilities, provided, however, that such removal, where possible, will be performed only by qualified personnel. PROVIDER shall be responsible for the costs arising out of such removal, unless the emergency that caused the removal was the result of the acts or omissions of the CITY; provided, however, that nothing in this Agreement prohibits PROVIDER from recovering such costs from any person or entity other than the CITY. The CITY shall give PROVIDER notice of said removal as soon as practicable under the circumstances, and shall work in cooperation with PROVIDER to restore the removed Communications Facilities expeditiously.

4. TERM; FEES. This Agreement shall be for a term of five years (the "**Term**") commencing upon the execution hereof by both Parties unless terminated by PROVIDER via written notice of the intent to terminate at least one (1) month prior to the end of the then current term. Either Party may seek renewal of this Agreement by providing written notice to the other Party no less than six (6) months prior to expiration of the Term. Any renewal of this Agreement shall be on such terms as the Parties may mutually agree upon in writing. Each Permit shall have an initial term of five (5) years and said term shall commence upon execution of said Permit by both Parties (the "**Commencement Date**"). The Annual License Fee (as defined in Paragraph 5 hereunder) for all facilities installed pursuant to said Permit will commence and be due on the first day of the month following installation (the "**License Fee Commencement Date**"), provided, however, that the initial Annual License Fee payment for each Permit shall be made thirty (30) days after the License Fee Commencement Date. Thereafter, on each annual anniversary of the License Fee Commencement Date, PROVIDER shall pay the Annual License Fee. The

Annual License Fee shall be paid to the CITY in accordance with Paragraphs 5 and 16 below. CITY and PROVIDER agree that they shall acknowledge, in writing, the License Fee Commencement Date of each Permit.

5. CONSIDERATION. PROVIDER shall pay to the CITY:

a one-time **Application Fee** of \$500 per application to attach a Communications Facility to an existing pole and \$1,000 per application to install a new pole and attach a Communications Facility to that new pole; and

an **Annual License Fee** of \$270 per year per Communications Facility. PROVIDER is not required to pay any additional fees for attachments to City-owned poles or structures, any such fees having already been included in the Annual License Fee.

Effective commencing on each yearly anniversary of the execution of this Agreement and continuing each year thereafter during the term, the Annual License Fee with respect to the ensuing year shall increase by 2%.

Any payment not made within ninety (90) days from the due date shall bear interest at the rate of 1.5% per month until paid, or if 1.5% exceeds the maximum rate allowed by law, then at the maximum rate allowed by law. The Parties agree that they will renegotiate the Annual License Fee by the date that is ten (10) years from the date of this Agreement (the "**Renegotiation Deadline**"), and that should the Parties fail to successfully renegotiate the Annual License Fee by the Renegotiation Deadline, either Party may elect to terminate this Agreement upon sixty (60) days' notice to the other Party.

6. EXTENSIONS. So long as the Term is still in effect, each Permit shall automatically be extended for four (4) additional five (5) year terms unless terminated by PROVIDER via written notice of the intent to terminate at least thirty (30) days prior to the end of the then-current term. Notwithstanding anything herein, after the expiration of this Agreement, its terms and conditions shall survive and govern with respect to any remaining Permit in effect until the expiration of its then-current term, or until termination.

7. USE; GOVERNMENTAL APPROVALS. PROVIDER shall use the Premises for the purpose of constructing, maintaining, repairing and operating a Communications Facility and uses incidental thereto as set forth in the Permit. PROVIDER shall have the right to replace, repair, add or otherwise modify the utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, antennas, conduits or frequencies are specified or not on any exhibit attached to a Permit, during the Term as per the permitting procedures in the UAM, applicable CITY Code, and state and federal law, provided, however, that modifications shall not be subject to additional permitting to the extent that (i) such modification to the attachment involves only substitution of internal components, and does not result in any change to the external appearance, dimensions, or weight of the attachment, as approved by the CITY; or (ii) such modification involves replacement of the attachment with an attachment that is the same, or smaller in weight and dimensions as the approved attachment. It is understood and agreed that PROVIDER's ability to use the Premises is contingent upon its obtaining, after the execution date of each Permit, all of the certificates, permits and other approvals (collectively the "**Governmental Approvals**") that may be required by any Federal, State or Local authorities as well as, where applicable, a satisfactory building structural analysis which will permit PROVIDER use of the Premises as set forth above. CITY shall cooperate with PROVIDER in its effort to

obtain such approvals and, except as otherwise provided in Paragraph 2 of this Agreement, shall take no action which would adversely affect the status of the Property or the Premises with respect to the proposed use thereof by PROVIDER. In the event that (i) any applications for any Governmental Approvals should be finally rejected; (ii) any such Governmental Approval issued to PROVIDER is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; and (iii) PROVIDER determines that such Governmental Approvals may not be obtained in a timely manner, PROVIDER shall have the right to terminate the applicable Permit. Notice of PROVIDER's exercise of its right to terminate shall be given to CITY in accordance with the notice provisions set forth in Paragraph 16 and shall be effective upon the mailing of such notice by PROVIDER, or upon such later date as designated by PROVIDER. All fees paid to said termination date shall be retained by CITY. Upon such termination, the applicable Permit shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other thereunder. Otherwise, PROVIDER shall have no further obligations for the payment of fees to CITY for the terminated Permit.

8. INDEMNIFICATION. PROVIDER shall indemnify and hold CITY harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of PROVIDER, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of CITY, or its employees, contractors or agents. Notwithstanding any other provision of this Agreement, no Party shall be liable in connection with this Agreement or any Permit for consequential, special, indirect, incidental, or punitive damages (including but not limited to lost revenues, loss of equipment, interruption or loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the Party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

9. INSURANCE.

Provider shall obtain and maintain at all times during the term of this Agreement Commercial General Liability insurance and Commercial Automobile Liability insurance protecting Provider in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and the Commercial General Liability insurance in an amount not less than Two Million Dollars (\$2,000,000) annual aggregate for personal injury liability and products-completed operations. The Commercial General Liability insurance policy shall name the City, its elected officials, officers, agents and employees as additional insureds as respects any covered liability arising out of Provider's performance of work under this Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled without replacement, nor shall the occurrence or aggregate limits set forth above be reduced, until the City has received at least thirty (30) days' advance written notice of such cancellation or change. Provider shall be responsible for notifying the City of such change or cancellation.

Filing of Certificates and Endorsements. Prior to the commencement of any work pursuant to this Agreement, Provider shall file with the City the required original certificate(s) of insurance with endorsements, which shall state the following:

(a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;

(b) that Provider's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

(c) that Provider's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the City.

The certificate(s) of insurance with endorsements and notices shall be mailed to the City at the address specified in § 16 below.

Workers' Compensation Insurance. Provider shall obtain and maintain at all times during the term of this Agreement statutory workers' compensation and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) and shall furnish the City with a certificate showing proof of such coverage. *Municipal Pole Attachment Agreement Page 9 of 14*

Insurer Criteria. Any insurance provider of Provider shall be admitted and authorized to do business in the State of Georgia and shall carry a minimum rating assigned by *A.M. Best & Company's Key Rating Guide* of "A" Overall and a Financial Size Category of "X" (i.e., a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

Severability of Interest. Any insurance policy deductibles or self-insured retentions shall be the responsibility of Provider. The City shall have no responsibility to pay or reimburse either. Any self-insured retention shall be listed on the certificate of insurance and be subject to approval by the City, which approval shall not be unreasonably withheld. The Commercial General Liability and Automobile Liability policies shall each contain a severability of interest or separation of insureds clause such that the insurance applies to each insured as if they were the only insured and separately to each insured against whom a claim is made, except for insurance policy limits.

Notwithstanding the foregoing, PROVIDER shall have the right to self-insure the coverages required by this Section 9 as long as it or its parent company maintains a net worth of at least \$300,000,000.

10. INTERFERENCE. PROVIDER agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then-existing industry standards to any equipment of CITY or other permitted users of the Property which existed on the Property prior to the date this Agreement is executed by the Parties. In the event any after-installed Communications Facility causes such interference, and after CITY has notified PROVIDER in writing of such interference, PROVIDER will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at PROVIDER's option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will CITY be entitled to terminate a Permit or relocate the equipment as long as PROVIDER is making a good faith effort to remedy the interference issue. CITY shall, with reasonable notice to PROVIDER, be entitled to power down immediately or cause to be powered down the Communications Facility where the interference is with traffic-control devices. CITY shall provide PROVIDER no less than thirty (30) days of any planned or routine maintenance of traffic control devices located where PROVIDER has installed its facilities. CITY agrees that any other permitted users of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then-existing industry standards to the then-existing equipment of PROVIDER. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

11. REMOVAL AT END OF TERM; ABANDONMENT OF RIGHT-OF-WAY. PROVIDER shall, upon expiration of the Term, if requested in writing by CITY, or within ninety (90) days after any earlier termination of a Permit, remove its equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. CITY agrees and acknowledges that the Communications Facilities, conduits, fixtures and personal property shall remain the personal property of PROVIDER and PROVIDER shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws.

The Parties recognize that CITY may hold an easement interest only in certain of its rights-of-way. Upon abandonment by CITY of a highway or section thereof, this Agreement affords PROVIDER no rights against

the owner of the underlying fee estate to maintain its facilities. PROVIDER shall have no right to cause CITY to continue to operate the road. If, in the reasonable exercise of its police power, CITY decides to abandon said Right-of-Way: (a), the applicable Permit shall terminate upon sixty (60) days' notice to PROVIDER prior to abandonment (or, in the cases of exigency, such notice as is reasonable under the circumstances) and no further fees will accrue; and (b) the CITY will provide PROVIDER as much advanced notice as practicable of its intent to abandon and will work in good faith with the provider to explore possible options for either retaining PROVIDER's rights to keep its facilities in place or for identifying and providing access to an alternative site, such measures to be undertaken at no expense to the CITY, for PROVIDER's use in a manner reasonably designed to minimize any service disruption. In no event shall the CITY be obligated to expend funds pursuant to this paragraph or to take official affirmative action, and the CITY's sole obligation shall be to work in good faith with the PROVIDER to identify reasonable alternatives to facilitate the PROVIDER'S service.

12. RIGHTS UPON SALE. Except as provided in Paragraph 11 above regarding abandonment, should CITY, at any time during the Term of any Permit decide (i) to sell or transfer all or any part of the Property to a purchaser other than PROVIDER, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by PROVIDER, or a larger portion thereof, for the purpose of operating and maintaining Communications Facilities or the management thereof, such sale or transfer, or grant of an easement or interest therein shall be under and subject to the Permit and any such purchaser, transferee or grantee shall recognize PROVIDER'S rights hereunder and under the terms of the Permit. In the event that CITY completes any such sale, transfer, or grant described in this Paragraph without executing an assignment of the Permit whereby the third party agrees in writing to assume all obligations of CITY under the Permit, then CITY shall not be released from its obligations to PROVIDER under the Permit, and PROVIDER shall have the right to look to CITY and the third party for the full performance of the Permit.

13. PROVIDER'S RIGHT OF TERMINATION. Notwithstanding any other provision of this Agreement, PROVIDER may, in its sole discretion, terminate any Permit on thirty (30) days' notice to the CITY at any time without any further liability for any Annual License Fees attributable to said Permit, so long as PROVIDER is not in default with respect to said Permit and so long as the Facilities under that Permit are removed by the PROVIDER within thirty (30) days of termination of the Permit.

14. GOVERNING LAW AND VENUE. This Agreement is a Georgia agreement made under the laws of the State. It will be enforced according to Georgia law without regard to its conflict of laws rules or any other rules directing referral to foreign law or forums. Any action related to this Agreement in any way shall be brought in the Superior Court of Fulton County, Georgia, the Georgia Public Service Commission, or the Federal Communications Commission to the extent that such court or agency has subject matter jurisdiction, and each party hereto hereby consents to the jurisdiction and venue of such Court or agency and the appropriate appellate courts therefrom in any such action and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the personal jurisdiction and venue of such court and to any claim of inconvenient forum. Each Party hereby agrees to execute an acknowledgment of service of process at the request of the other Party in any litigation related to this Agreement. In the event that a Party does not provide an acknowledgment of service as agreed, each Party consents to service of process at that Party's address as set forth in Paragraph 16 (Notices).

15. ASSIGNMENT. This Agreement, and each Permit under it, may be sold, assigned or transferred by PROVIDER without any approval or consent of the CITY to any parent, subsidiary, affiliate, or any person, firm or corporation that shall control, be under the control of, or be under common control with PROVIDER, or to any entity into which PROVIDER may be merged or consolidated or which purchases substantially all of the assets of PROVIDER that are subject to this Agreement. As to other parties, this Agreement and each Permit may not be sold, assigned or transferred without the written consent of the CITY, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of PROVIDER or transfer upon partnership or corporate dissolution of PROVIDER shall constitute a sale, assignment, or transfer hereunder. Notwithstanding the foregoing, PROVIDER may provide capacity across the Communications Facilities to a third party without the consent required under this paragraph, so long as PROVIDER retains control over and remains solely responsible for such Communications Facilities. The use of the Communications Facilities by third parties (including, but not limited to, leases of dark fiber) that involves no additional attachment is not considered a sublicense to a third party subject to the provisions of this paragraph. PROVIDER shall provide written notice of all sales, assignments or transfers within 60 days thereof.

16. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

CITY

Attn: City Manager
City of South Fulton
5440 Fulton Industrial Blvd.
South Fulton, GA 30336

AT&T Mobility

Attn: TAG Group – Lease Administration
Re: Wireless Installation in ROW, [City], GA
575 Morosgo Drive NE
Atlanta GA, 30324

Attn: AT&T Legal Department
Re: Wireless Installation in ROW, [City], GA
208 S. Akard Street
Dallas, TX 75202-4206

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

17. DEFAULT. In the event there is a breach by a Party with respect to any of the provisions of this Agreement or its obligations hereunder, the non-breaching Party shall give the breaching Party written notice of such breach. After receipt of such written notice, the breaching Party shall have thirty (30) days in which to cure any breach, provided the breaching Party shall have such extended period as may be

required beyond the thirty (30) days if the breaching Party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. The non-breaching Party may not maintain any action or effect any remedies for default against the breaching Party unless and until the breaching Party has failed to cure the breach within the time periods provided in this Paragraph.

18. REMEDIES. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may, after fifteen (15) days written notice and an additional fifteen (15) days to cure such default, terminate the applicable Permit and/or pursue any remedy now or hereafter available to the non-defaulting Party under the laws or judicial decisions of the State of Georgia. Further, upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to, obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. If PROVIDER undertakes any such performance on CITY's behalf and CITY does not pay PROVIDER the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due, PROVIDER may offset the full undisputed amount due against all fees due and owing to CITY under the applicable Permit until the full undisputed amount is fully reimbursed to PROVIDER.

19. ENVIRONMENTAL. Except as permitted by law, neither Party will allow any hazardous substances, including without limitation, any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances and all other materials defined by or regulated under any Environmental Law, including those defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9604, pollutants or contaminants as defined in CERCLA, 42 U.S.C. § 9604(A)(2), or hazardous waste as defined in the Resources Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903, or other similar applicable Federal or State laws or regulations, to be generated, released, stored, or deposited over, beneath, or on the Premises or Property or on any structures located on the Premises from any source whatsoever.

20. CASUALTY. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within thirty (30) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt PROVIDER's operations at the Premises for more than thirty (30) days, then PROVIDER may, at any time following such fire or other casualty, provided CITY has not completed the restoration required to permit PROVIDER to resume its operation at the Premises, may terminate the Permit upon fifteen (15) days prior written notice to CITY. Any such notice of termination shall cause the Permit to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of the Permit and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under the Permit. Notwithstanding the foregoing, the Annual License Fee shall abate during the period of repair following such fire or other casualty in proportion to the degree to which PROVIDER's use of the Premises is impaired.

21. AUTHORIZED ENTITIES. This Agreement is entered into by the Parties each on its own behalf and for the benefit of: (i) any entity in which the Party directly or indirectly holds an equity or similar interest; (ii) any entity which directly or indirectly holds an equity or similar interest in the Party; or (iii) any entity directly or indirectly under common control with the Party. Each Party and each of the entities described

above are referred to herein as an **"Authorized Entity"**. No obligation is incurred or liability accepted by any Authorized Entity until that Authorized Entity enters into a site specific Permit. Only the Party and the Authorized Entity executing a Permit are responsible for the obligations and liabilities related thereto arising under that Permit and this Agreement. All communications and invoices relating to a Permit must be directed to the Authorized Entity signing the Permit. A default by any Authorized Entity will not constitute or serve as a basis for a default by any other Authorized Entity not a party to the applicable Permit.

22. **CHANGE OF LAW.** In the event that any legislative, regulatory, or judicial action affects the rights or obligations of the Parties, or establishes rates, terms or conditions for the construction, operation, maintenance, repair or replacement of small cells on City infrastructure or in the right of way, that differ in any material respect from the terms of this Agreement ("New Law"), then unless otherwise required by the New Law: (a) the rates, terms, and conditions in this Agreement shall continue to apply to Communications Facilities installed pursuant to this Agreement prior to the effective date of the New Law until the term of the Agreement expires, after which the rates, terms, and conditions in the New Law shall apply; and (b) the provisions of the New Law shall apply to Communications Facilities installed after the effective date of the New Law.

23. **MISCELLANEOUS.** This Agreement and the Permits that may be executed from time to time hereunder contain all agreements, promises and understandings between the CITY and PROVIDER regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either the CITY or PROVIDER in any dispute, controversy or proceeding. If any part of any provision of this Agreement shall be held to be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement. This Agreement may not be amended or varied except in a writing signed by all Parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, and such Party shall have the right to enforce such rights at any time. The performance of this Agreement via each Permit shall be governed, interpreted, construed and regulated by the laws of the State of Georgia (now and as it may be amended or interpreted in the future), without reference to its conflicts of law principles. This Agreement is subject to all applicable Federal, State and Local laws, and regulations, rulings and orders of governmental agencies.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written and have caused this Agreement to be executed in separate counterparts, each to be considered an original by their authorized representative.

[Remainder of page intentionally left blank; signature page to follow.]

WITNESS

J. Diane White
City Clerk

CITY:

SOUTH FULTON GEORGIA

By: 

Name: ODIE DONALD

Title: CITY MANAGER

Date: 4/17/19

WITNESS

J. Diane White
City Clerk

ATTORNEY:

By: 

Name: EMILIA WALKER

Title: CITY ATTORNEY

Date: 4/17/19

WITNESS

Kenneth D. Syvarth
Kenneth D. Syvarth
Senior Real Estate/Const. Mgr

PROVIDER, LLC

By: 

Name: James D. Hignite

Title: Director AT&T Construction

Date: 4/8/2019